



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[EPA-HQ-OPPT-2023-0223; FRL 10781-01-OCSP]

RIN 2070-AL40

Implementing Statutory Addition of Certain Per- and Polyfluoroalkyl Substances (PFAS) to the Toxics Release Inventory Beginning with Reporting Year 2023

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is updating the list of chemicals subject to toxic chemical release reporting under the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act (PPA). Specifically, this action updates the regulations to identify nine per- and polyfluoroalkyl substances (PFAS) that must be reported pursuant to the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) enacted on December 20, 2019. As this action is being taken to conform the regulations to a Congressional legislative mandate, notice and comment rulemaking is unnecessary.

DATES: This final rule is effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2023–0223, is available at <https://www.regulations.gov>. Additional instructions on visiting the docket, along with more information about dockets generally, is available at <https://www.epa.gov/dockets>. For the latest status information on EPA/DC services and docket access, visit <https://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Brian Ventura, Data Gathering and Analysis Division (7406M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC

20460-0001; telephone number: (202) 566-0897; email address: ventura.brian@epa.gov.

For general information contact: The Emergency Planning and Community Right-to-Know Act Hotline; telephone numbers: toll free at (800) 424-9346 (select menu option 3) or (703) 348-5070 in the Washington, DC Area and International; or go to <https://www.epa.gov/home/epa-hotlines>.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you manufacture, process, or otherwise use any of the PFAS listed in this rule. The following list of North American Industry Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this action applies to them. Potentially affected entities may include:

- Facilities included in the following NAICS manufacturing codes (corresponding to Standard Industrial Classification (SIC) codes 20 through 39): 311*, 312*, 313*, 314*, 315*, 316, 321, 322, 323*, 324, 325*, 326*, 327*, 331, 332, 333, 334*, 335*, 336, 337*, 339*, 111998*, 113310, 211130*, 212323*, 212390*, 488390*, 512230*, 512250*, 5131*, 516210*, 519290*, 541713*, 541715* or 811490*. *Exceptions and/or limitations exist for these NAICS codes.

- Facilities included in the following NAICS codes (corresponding to SIC codes other than SIC codes 20 through 39): 211130* (corresponds to SIC code 1321, Natural Gas Liquids, and SIC 2819, Industrial Inorganic Chemicals, Not Elsewhere Classified); or 212114, 212115, 212220, 212230, 212290*; or 2211*, 221210*, 221330 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce) (corresponds to SIC codes 4911, 4931, and 4939, Electric Utilities); or 424690, 424710 (corresponds to SIC code 5171, Petroleum Bulk Terminals and Plants); 425120 (limited to facilities previously classified

in SIC code 5169, Chemicals and Allied Products, Not Elsewhere Classified); or 562112 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis (previously classified under SIC code 7389, Business Services, NEC)); or 562211*, 562212*, 562213*, 562219*, 562920 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. 6921 *et seq.*) (corresponds to SIC code 4953, Refuse Systems).

*Exceptions and/or limitations exist for these NAICS codes.

- Federal facilities.

A more detailed description of the types of facilities covered by the NAICS codes subject to reporting under EPCRA section 313 can be found at: <https://www.epa.gov/toxics-release-inventory-tri-program/tri-covered-industry-sectors>. To determine whether your facility would be affected by this action, you should carefully examine the applicability criteria in 40 CFR part 372, subpart B. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. What action is the Agency taking?

EPA is codifying the nine additional PFAS that were added to the EPCRA section 313 list of reportable chemicals (more commonly known as the Toxics Release Inventory (TRI)) since the last conforming rule pursuant to the FY2020 NDAA (87 FR 42651; July 18, 2022) (FRL-9427-01-OCSP).

C. What is the Agency's authority for taking this action?

This action is issued under the authority of section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (42 U.S.C. 11001 *et seq.*), section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106), and section 7321 of the National Defense Authorization Act for Fiscal Year 2020 (FY2020 NDAA) (Pub. L. 116-92).

II. Background

A. What is NDAA section 7321?

On December 20, 2019, the FY2020 NDAA was signed into law. Among other

provisions, section 7321(c) identifies certain regulatory activities that automatically add PFAS or classes of PFAS to the EPCRA section 313 list of reportable chemicals. Specifically, PFAS or classes of PFAS are added to the EPCRA section 313 list of reportable chemicals beginning January 1 of the calendar year after any one of the following dates:

- Final Toxicity Value. The date on which the Administrator finalizes a toxicity value for the PFAS or class of PFAS;
- Significant New Use Rule. The date on which the Administrator makes a covered determination for the PFAS or class of PFAS;
- Addition to Existing Significant New Use Rule. The date on which the PFAS or class of PFAS is added to a list of substances covered by a covered determination;
- Addition as an Active Chemical Substance. The date on which the PFAS or class of PFAS to which a covered determination applies is:

(1) Added to the list published under section 8(b)(1) of the Toxic Substances Control Act (TSCA) (15 U.S.C. 2601 *et seq.*) and designated as an active chemical substance under TSCA section 8(b)(5)(A); or

(2) Designated as an active chemical substance under TSCA section 8(b)(5)(B) on the list published under TSCA section 8(b)(1).

The FY2020 NDAA defines “covered determination” as a determination made by rule under TSCA section 5(a)(2) that a use of a PFAS or class of PFAS is a significant new use (except such a determination made in connection with a determination described in TSCA sections 5(a)(3)(B) or 5(a)(3)(C)).

Under FY2020 NDAA section 7321(e), EPA must review confidential business information (CBI) claims before PFAS are added to the list pursuant to subsections (b)(1), (c)(1), or (d)(3) whose identities are subject to a claim of protection from disclosure under 5 U.S.C. 552(a), pursuant to subsection (b)(4) of that section. Under the FY2020 NDAA EPA must:

- Review a claim of protection from disclosure; and

- Require that person to reassert and substantiate or re-substantiate that claim in accordance with TSCA section 14(f) (15 U.S.C. 2613(f)).

In addition, if EPA determines that the chemical identity of a PFAS or class of PFAS qualifies for protection from disclosure, EPA must include the PFAS or class of PFAS on the TRI in a manner that does not disclose the protected information.

B. What PFAS have been added to the TRI list?

EPA has reviewed the above-listed criteria and found nine chemicals that meet the requirements of this part of the FY2020 NDAA and whose identity is not claimed as confidential business information (CBI).

Chemical Name/CAS No.	Triggering Action	Effective Date
Perfluorobutanoic acid (375-22-4)	Final Toxicity Value (Ref. 1)	1/1/23
Sodium perfluorobutanoate (2218-54-4)	Final Toxicity Value (Ref. 1)	1/1/23
Potassium heptafluorobutanoate (2966-54-3)	Final Toxicity Value (Ref. 1)	1/1/23
Ammonium perfluorobutanoate (10495-86-0)	Final Toxicity Value (Ref. 1)	1/1/23
Perfluorobutanoate (45048-62-2)	Final Toxicity Value (Ref. 1)	1/1/23
Alcohols, C8-16, γ - ω -perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc. (2728655-42-1)	Addition to Existing Significant New Use Rule (see 85 FR 45109, <i>July 27, 2020</i>) (FRL-10010-44) CBI Declassification (Ref. 2)	1/1/23
Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs. (2738952-61-7)	Addition to Existing Significant New Use Rule (see 85 FR 45109, <i>July 27, 2020</i>) (FRL-10010-44) CBI Declassification (Ref. 2)	1/1/23
Acetamide, N-(2-aminoethyl)-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine,	Addition to Existing Significant New Use Rule (see	1/1/23

oxidized (2742694-36-4)	85 FR 45109, <i>July 27, 2020</i> (FRL-10010-44) CBI Declassification (Ref. 2)	
Acetic acid, 2-[(γ-ω-perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters (2744262-09-5)	Addition to Existing Significant New Use Rule (see 85 FR 45109, <i>July 27, 2020</i>) (FRL-10010-44) CBI Declassification (Ref. 2)	1/1/23

As stated above, under FY2020 NDAA section 7321(e), EPA must review CBI claims before PFAS whose identities are subject to a claim of protection from disclosure under 5 U.S.C. 552(a) (pursuant to subsection (b)(4)) are added to the list. The substances with the CAS No. 2728655-42-1, 2738952-61-7, 2742694-36-4, and 2744262-09-5 met the criteria under FY2020 NDAA section 7321(c)(1)(A)(iii), but were subject to a claim of protection from disclosure under 5 U.S.C. 552(b)(4) at that time (i.e., when the FY2020 NDAA was enacted). These substances' identities have since been published on the non-confidential portion of the TSCA Inventory in 2022; therefore, the chemicals were added pursuant to FY2020 NDAA section 7321(e) to the TRI list and are being incorporated into the CFR pursuant to this rule.

As established by the FY2020 NDAA, the addition of these PFAS to the EPCRA section 313 list of reportable chemicals is effective January 1 of the calendar year following any of the dates identified in FY2020 NDAA section 7321(c)(1)(A). Accordingly, non-CBI PFAS are reportable beginning with the 2023 reporting year (i.e., reports due July 1, 2024).

EPA is issuing this final rule to amend the EPCRA section 313 list of reportable chemicals in 40 CFR 372.65 to include nine non-CBI PFAS added pursuant to the FY2020 NDAA.

III. Good Cause Exception

Section 553(b)(B) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B),

provides that, when an agency for good cause finds that public notice and comment procedures are impracticable, unnecessary, or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this rule final without prior proposal and opportunity for comment because such notice and opportunity for comment is unnecessary. This action is being taken to comply with a mandate in an Act of Congress, where Congress identified actions that automatically add these chemicals to the TRI. Thus, EPA has no discretion as to the outcome of this rule, which merely aligns the regulations with the self-effectuating changes provided by the FY2020 NDAA.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not itself physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. IRIS Toxicological Review of Perfluorobutanoic Acid (PFBA, CASRN 375-22-4) and Related Salts. December 2022. <https://iris.epa.gov/static/pdfs/0701tr.pdf>.

2. EPA. Non-CBI TSCA Inventory, February 2022.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <https://www.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and 14094: Modernizing Regulatory Review

This action is not a significant regulatory action as defined in Executive Order 12866 (58 FR 51735, October 4, 1993), as amended by Executive Order 14094 (88 FR 21879, April 11,

2023), and was therefore not subject to a requirement for Executive Order 12866 review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C 3501 et. seq. Burden is defined in 5 CFR 1320.3(b). OMB has previously approved the information collection activities contained in the existing regulations and assigned OMB control numbers 2070-0212 and 2050-0078.

Currently, the facilities subject to the reporting requirements under EPCRA section 313 and PPA section 6607 may use either EPA Toxic Chemicals Release Inventory Form R (EPA Form 9350-1), or EPA Toxic Chemicals Release Inventory Form A (EPA Form 9350-2). The Form R must be completed if a facility manufactures, processes, or otherwise uses any listed chemical above threshold quantities and meets certain other criteria. For the Form A, EPA established an alternative threshold for facilities with low annual reportable amounts of a listed toxic chemical. The annual reportable amount is equal to the combined total quantities of the following waste management activities:

- Released at the facility (including disposed of within the facility);
- Treated at the facility (as represented by amounts destroyed or converted by treatment processes);
- Recovered at the facility as a result of recycling operations;
- Combusted for the purpose of energy recovery at the facility; and
- Amounts transferred from the facility to off-site locations for the purpose of recycling, energy recovery, treatment, and/or disposal.

A facility that meets the appropriate reporting thresholds, but estimates that the total annual reportable amount of the chemical does not exceed 500 pounds per year, can take advantage of an alternative manufacture, process, or otherwise use threshold of 1 million pounds per year of the chemical, provided that certain conditions are met, and submit the Form A instead of the Form R. In addition, respondents may designate the specific chemical identity of a

substance as a trade secret pursuant to EPCRA section 322 (42 U.S.C. 11042) and 40 CFR part 350. OMB has approved the reporting and recordkeeping requirements related to Forms A and R, supplier notification, and petitions under OMB Control No. 2070-0212 (EPA Information Collection Request (ICR) No. 2613.04) and those related to trade secret designations under OMB Control No. 2050-0078 (EPA ICR No. 1428.12).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers relevant to EPA's regulations in 40 CFR are listed in 40 CFR part 9 and displayed on the information collection instruments (e.g., forms, instructions).

C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA, 5 U.S.C. 601 *et seq.* The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA, 5 U.S.C. 553, or any other statute. As discussed in Unit III., this rule is not subject to notice and comment requirements because the Agency has invoked the APA "good cause" exception under 5 U.S.C. 553(b).

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate of \$100 million or more as described in UMRA, 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local, or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it will not have substantial direct effects on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13175 does not apply to this action.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000) because it will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes. It does not have substantial direct effects on tribal government because EPA does not anticipate that PFAS reporting will be conducted by Tribes so this rulemaking is not expected to impose substantial direct compliance costs on Tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of Executive Order 13045. This action is not subject to Executive Order 13045, because it does not concern an environmental health or safety risk. Since this action does not concern human health, EPA’s Policy on Children’s Health also does not apply.

Although this action does not concern an environmental health or safety risk, this reporting rule will aid in collecting information regarding PFAS. This rule will be of use in identifying releases of PFAS to which children may be exposed. EPA believes that the information obtained as a result of this action could also be used by the public, government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential human health or environmental risks including those that may disproportionately affect children.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. Further, we have concluded that this action is not likely to have any adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards. As such, NTTAA section 12(d), 15 U.S.C. 272, does not apply to this action.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations (people of color) and low-income populations.

The EPA believes that it is not practicable to assess whether the human health or environmental conditions that exist prior to this action result in disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This regulatory action makes changes to the reporting requirements for PFAS that will result in more information being collected and provided to the public; it does not have any impact on human health or the environment. This action does not address any human health or environmental risks and does not affect the level of protection provided to human health or the environment. This action makes changes to the reporting requirements for PFAS, which will provide information that government agencies and others can use to identify potential problems, set priorities, and help inform activities.

However, EPA believes that this type of action does not directly concern human health or environmental conditions and therefore cannot be evaluated with respect to potentially

disproportionate and adverse effects on people of color, low-income populations and/or indigenous peoples. This action involves additions to reporting requirements that will not affect the level of protection provided to human health or the environment. Although this action does not concern human health or environmental conditions, the information collected through TRI reporting will serve to inform communities living near facilities that report to TRI, and there is the potential for new information about toxic chemical releases and waste management practices occurring in those communities to become available through the TRI reporting data.

The information obtained as a result of this action may be used to collect information on releases of PFAS. Understanding releases of PFAS will also help inform and tailor future EPA actions to address PFAS as needed. EPA also believes that the information obtained as a result of this action potentially could be used by the public (including people of color, low-income populations and/or indigenous peoples) to inform their behavior as it relates to releases of PFAS exposure or by government agencies and others to identify potential problems, set priorities, and take appropriate steps to reduce any potential human health or environmental risks.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.*, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 372

Environmental protection, community right-to-know, reporting and recordkeeping requirements, and toxic chemicals.

Dated: June 16, 2023 .

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR part 372 as

follows:

PART 372—TOXIC CHEMICAL RELEASE REPORTING: COMMUNITY RIGHT-TO-KNOW

1. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. Amend § 372.65 by:

a. In paragraph (d) in table 4, adding in alphabetical order entries for “Acetamide, N-(2-aminoethyl)-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized”; “Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs.”; “Acetic acid, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters”; “Alcohols, C8-16, γ - ω -perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc.”, “Ammonium perfluorobutanoate”, “Perfluorobutanoate”, “Perfluorobutanoic acid”, “Potassium heptafluorobutanoate”, and “Sodium perfluorobutanoate.”

b. In paragraph (e) in table 5, adding in numerical order entries for “10495-86-0”; “2218-54-4”; “2728655-42-1”; “2738952-61-7”; “2742694-36-4”; “2744262-09-5”; “2966-54-3”; “375-22-4”; and “45048-62-2”.

The additions read as follows:

§ 372.65 Chemicals and chemical categories to which this part applies.

* * * * *

(d) * * *

Table 4 to paragraph (d)

Chemical name	CAS No.	Effective date
* * * * *	* *	
Acetamide, N-(2-aminoethyl)-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized	2742694-36-4	1/1/23
Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs.	2738952-61-7	1/1/23

Acetic acid, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters	2744262-09-5	1/1/23
* * * * *		
Alcohols, C8-16, γ - ω -perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc.	2728655-42-1	1/1/23
* * * * *		
Ammonium perfluorobutanoate	10495-86-0	1/1/23
* * * * *		
Perfluorobutanoate	45048-62-2	1/1/23
* * * * *		
Perfluorobutanoic acid	375-22-4	1/1/23
* * * * *		
Potassium heptafluorobutanoate	2966-54-3	1/1/23
* * * * *		
Sodium perfluorobutanoate	2218-54-4	1/1/23
* * * * *		

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(e) * * *

Table 5 to paragraph (e)

CAS No.	Chemical name	Effective date
* * * * *		
375-22-4	Perfluorobutanoic acid	1/1/23
* * * * *		
2218-54-4	Sodium perfluorobutanoate	1/1/23
* * * * *		
2966-54-3	Potassium heptafluorobutanoate	1/1/23
* * * * *		
45048-62-2	Perfluorobutanoate	1/1/23
* * * * *		
10495-86-0	Ammonium perfluorobutanoate	1/1/23
* * * * *		
2728655-42-1	Alcohols, C8-16, γ - ω -perfluoro, reaction products with 1,6-diisocyanatohexane, glycidol and stearyl alc.	1/1/23
2738952-61-7	Acetamide, N-[3-(dimethylamino)propyl]-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs.	1/1/23
2742694-36-4	Acetamide, N-(2-aminoethyl)-, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., polymers with N1,N1-dimethyl-1,3-propanediamine, epichlorohydrin and ethylenediamine, oxidized	1/1/23
2744262-09-5	Acetic acid, 2-[(γ - ω -perfluoro-C4-20-alkyl)thio] derivs., 2-hydroxypropyl esters	1/1/23